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IN THE  
**Supreme Court of the United States**

October Term, 196

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No. 12

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COMMUNIST PARTY OF THE UNITED STATES  
OF AMERICA,

*Petitioner,*

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

On Writ of Certiorari to the United States Court of Appeals  
for the District of Columbia Circuit

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**BRIEF FOR AMERICAN CIVIL LIBERTIES UNION,  
AMICUS CURIAE**

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**Interest of *Amicus***

The American Civil Liberties Union, appearing herein with the consents of both parties filed with the Clerk of this Court, is a nationwide nonpartisan organization devoted solely to the protection and advancement of the individual liberties fundamental to the democratic way of life. *Amicus* is primarily concerned with the instant case because it believes the free exchange of political opinion and the cognate freedom to associate for the purpose of political expression, guaranteed from government interference by the Constitution, are drastically curtailed by the instant statute and order.

## Statement of the Case

The facts, proceedings, and statutes here involved are set forth in detail in the briefs of the parties. Here the statute will be summarized so far as relevant to the instant argument.

The Subversive Activities Control Board found, after a hearing, that petitioner is a "Communist-action organization" as defined in the Subversive Activities Control Act of 1950,<sup>1</sup> and issued the order here involved directing petitioner to register as a "Communist-action organization" under the Act. The Act defines a "Communist-action organization" as "any organization in the United States . . . which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title." (Section 3(3)(a).) Section 2 declares that the world Communist movement is "a world-wide revolutionary movement" aiming to establish Communist dictatorships throughout the world by treachery, espionage, or any other necessary means; that the movement is directed by the Communist dictatorship of an unnamed foreign country; and that action organizations in other countries, which are subject to the control of the dictatorship, "endeavor to carry out the objective of the world Communist movement by bringing about the overthrow of existing governments . . . and setting up Communist totalitarian dictatorships . . ."

In determining whether any organization is a "Communist-action organization," as defined in Section 3, with reference back to Section 2, the Board is directed to "take into consideration" among other things, and did in the

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<sup>1</sup> 64 Stat. 987, 50 U. S. C. 781, ff.

instant case place major emphasis on, "the extent to which its views and policies do not deviate from those of such foreign government (Russia)" (Section 13(e)(2)).

An organization found to be a "Communist-action organization" by the Board must register, in registers "kept and maintained in such manner as to be open for public inspection" (Section 9(b)), the names and addresses of all officers and members during the preceding year, the sources of all money received and the purposes for which expended, and a list of printing presses and similar machines in which the organization has an interest (Section 7).

The Act further provides that any publication disseminated by the organization through the mails or in interstate or foreign commerce, must bear on its wrapper as well as its text the notation "Disseminated by ..... , a Communist organization", and all broadcasts are to be preceded by the announcement: "The following program is sponsored by ..... , a Communist organization", with the name of the organization in place of the blank (Section 10).

Besides the public registration of members of an organization found to be a "Communist-action organization", the Act imposes specific disabilities on members with respect to employment in the Government, in defense facilities, and labor unions (Section 5); passports (Section 6); if they are aliens, exclusion, deportation, and naturalization; as well as denaturalization (Sections 22, 25).

### **Question To Be Argued**

This brief will be limited to the issue of whether the statute and order violate the First Amendment, and it will refrain from developing arguments that are being advanced on this point in petitioner's brief.

## Summary of Argument

The legislative history of the registration provision unequivocally demonstrates that its purpose is to interfere with petitioner and its members in their expression of ordinary non-revolutionary opinions on social and political issues. The exposure and stigmatization effected by the registration of petitioner as a "Communist-action organization" as defined in the Act, and of its officers and members, would accomplish the legislative purpose: it would impede their efforts to gain an audience for their views on current issues, to associate with non-Communists for the purpose of peaceful political expression, and to attract persons interested in their non-revolutionary political opinions to membership in petitioner. These restraints on First Amendment rights are unconstitutional because they interfere with expression of opinion that is far removed from incitement to violence or any other danger that Congress has the power to prevent.

## ARGUMENT

The statutory provision for registration as here interpreted, and the registration order issued thereunder against petitioner, violate the First Amendment to the Constitution.

### 1. Purpose of Registration Provision

Regardless of what may be its ultimate objectives, petitioner acts in its public appearances and contacts as a political organization expressing non-revolutionary opinions on the issues of the day. Its public expressions relate to such social and political topics as labor relations, race discrimination, and most continually, international affairs, such as relations with China or control of atomic weapons (see Court of Appeals' Opinion, Ops. 67-69).<sup>2</sup> It is clear

<sup>2</sup> "Ops." refers to the Appendices to the petition for certiorari, in which the opinions below and the statutes are printed.



from the legislative history of the Act that the registration provision is intended to obstruct petitioner and its members when they express themselves and seek to influence other people on these non-revolutionary issues, and to associate with non-Communists for this purpose, or when they seek to attract as members people who are sympathetic with their views on such current issues.

The Senate Report on the bill which became the instant Act pointed out: "The purpose of registration is—(a) to expose the Communist movement and protect the public against innocent and unwitting collaboration with it . . .",<sup>3</sup> and "The proposed bill represents . . . a registration statute calculated to effect disclosure of the identity and propaganda of individual Communists and Communist organizations."<sup>4</sup> The Report makes clear that the propaganda the draftsmen had in mind was opinion on everyday political issues; it points out, in justification for the Act's purpose of exposure, that "the present line of the Party . . . is to avoid wherever possible the open advocacy of violence."<sup>5</sup> Illustrating the purpose of impeding communication of non-revolutionary political opinion and the association of Communists with non-Communists for the purpose of peaceful political expression, Senator Ferguson, submitting the Senate Report, pointed out that genuine liberals should appreciate the registration provision be-

<sup>3</sup> Senate Report No. 1358, 81st Cong., 2nd Sess., on S. 2311, p. 3. The other purpose of registration is stated as "(b) to expose, and protect the public against, certain acts which are declared unlawful." The Report then specifies the acts made unlawful by the statute, such as the communication of defense secrets.

<sup>4</sup> *Ibid.*, p. 7.

<sup>5</sup> *Ibid.*



cause it would help them prevent Communist infiltration of their organizations.<sup>6</sup>

## 2. Effect on First Amendment Rights

The registration provision, together with Section 10's requirement of labeling and identifying propaganda, would undoubtedly have the effect intended by Congress: to deter anyone from giving an audience to petitioner or its members on any public issue, from responding to their views, or associating with them politically. In *Talley v. California*, 362 U. S. 60; *Bates v. Little Rock*, 361 U. S. 516; and *NAACP v. Alabama*, 357 U. S. 449, this Court recognized that the government exercises an effective deterrent to expression and association when it compels an individual's exposure as a supporter of an unpopular cause. The instant Act goes much further. It does not merely use the weapon of exposure, with the matter of popularity or unpopularity left to public opinion, but the government itself stigmatizes petitioner and its members with involvement in treachery, violence, and destruction of liberty (Secs. 3(3) and 2). On this basis alone it is far different from the statutes providing for a non-invidious registration, cited by the court below (Ops. 32-33). And, demonstrating the Act's purpose of obstructing political expression and association by petitioner's members, it stigmatizes all of them, as contrasted with an exposure of those in particular occupations or positions where they might be thought unfit or dangerous.

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<sup>6</sup> 96 Cong. Rec. 14535. See also Senator Ferguson's statement that the purpose of registration is "to protect the public at large against innocent collaboration with communism and against its treachery \* \* \*. No longer can there be dupes"; and his repeated explanations that the purpose was disclosure to the public (*Ibid.*, and 96 Cong. Rec. 14439-14440). See statement of Senator Mundt, another draftsman of the Act (See 96 Cong. Rec. 14575), that the Act "will alert Americans to the fact that Communist propaganda is spewed out to them from Communist sources" (96 Cong. Rec. 14598).

The Government exposure and condemnation of petitioner and its members undoubtedly is an interference with the right of free speech "guaranteed every citizen that he may reach the minds of willing listeners"<sup>7</sup> and undoubtedly blocks their opportunities for communication and association. The question is whether this restraint is permissible under this Court's interpretations of the First Amendment, assuming *arguendo* there is support for the declarations in Section 2 of the Act as to Communism and for the Board's findings as to petitioner.

The obstruction imposed by the Act on communication of political views by petitioner and its members violates the principle that the government can restrain expression only on the basis of *what* is said, and not on the basis of *who* says it. *DeJonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 242. This principle is essential to the continuance of a truly "free debate of ideas" (see *Dennis v. United States*, 341 U. S. 494, 503). Under the First Amendment, reason and the free exchange of ideas in the marketplace are to be the citizen's protection against the false and misleading; by this Act, instead, the government assumes the function of directing the people in the field of ideas and political association by telling them what speakers must be shunned.<sup>8</sup> We do not mean to challenge the proposition that it may be helpful in evaluating a viewpoint to know whether its proponent is a member of petitioner; we mean only that the government must, under the First Amendment, allow the citizen to make his own determinations in the field of political opinion and association, and cannot take over, for him, the approval or condemnation of spokesmen on political issues.

<sup>7</sup> See *Kovacs v. Cooper*, 336 U. S. 79, 87.

<sup>8</sup> Government condemnation of petitioner and its members is accompanied by the specific threat that communication with them may be treated as evidence of membership, in a prosecution under Section 15 of the Subversive Activities Control Act for failure to register or to obey the sanctions on members. (See Section 5 of the Communist Control Act. Ops. 179-180.)

This Act establishes the new principle that the Government can interfere with innocent expression because of an alleged hidden motive, and with the total right of expression because one phase of a person's or organization's activity is found to be dangerous. *Contra: Donaldson v. Read*, 333 U. S. 278.

### 3. Lack of Justification

The justifications for this Government interference and direction of expression and association, according to the Act and the opinion of the court below, are the dangers of espionage, sabotage, and overthrow of the Government.<sup>9</sup> But the question is, what is the connection between these dangers and the peaceful political expression on everyday issues which the registration provision was intended to and would affect. The relation apparently consists of the possibility that through the attraction of its views on these issues the Communist Party may gain influence over people so that it may eventually persuade them to engage in dangerous acts. The registration provision thus impedes and interferes with expression and association that merely may lead to a person's heeding speech concerning violence.

This Act is not restraining incitement nor advocacy nor even discussion of violence, but expression much further removed from the possibility of dangerous acts. Compare *Yates v. United States*, 354 U. S. 298, 318-326. There has been no demonstration that narrower and more direct means, operating nearer the point of danger, are inadequate to prevent any danger of overthrow of the government, espionage or sabotage; and in fact more direct means, less injurious to First Amendment principles, are in use and have been approved by this Court. (See e.g. *Dennis v.*

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<sup>9</sup> While the opinion below also discusses the evil of foreign control of our Government, the danger in the contemplation of Congress and the court below is foreign influence leading to overthrow of our Government, rather than foreign influence as such (Ops. 10).

*United States*, 341 U. S. 494.) The instant interference with the communication of permissible political opinion and with association for this purpose therefore violates the First Amendment.

We have assumed, as the draftsmen of the Act assumed, that petitioner would continue in existence and that stigmatization of petitioner and its members would impede their political communication and association with persons outside the Communist Party. Petitioner contends that the effect of the stigma and the sanctions imposed on its officers and members would be to destroy it completely. At the least there is no question that many persons would be deterred from officership or membership. The Act thus interferes with the right to associate in the Party and use it as an organ of expression of peaceable political opinion. The interference with the First Amendment rights of expression and association is again overly broad from the standpoint of the alleged dangers of sabotage, espionage, and overthrow, and the Act thus again violates the First Amendment.

#### **4. Especial Restraint on Expression of Opinion on International Issues**

The particular effect of the statute and order on free expression of views on international questions must be noted. "One of the chief items of evidence" establishing that petitioner is a "Communist-action organization" was, according to the Court of Appeals (Ops. 71), the coincidence of its views with Russia's on various international issues, such as the Truman Doctrine, representation of China in the United Nations, or the Korean War (Ops. 68). The Court held that the Board correctly treated coincidence as significant, regardless of its causation or even of whether Russia had preceded petitioner in espousing the view. Considering the importance attached to mere coincidence of opinion, the Act as here applied necessarily deters or

ganizations, and individuals,<sup>10</sup> from expressing views similar to Russia's on current issues. Obviously many of these views may be regarded as meritorious by non-Communists on non-Communist premises. The restraint on expression imposed by the registration provision impedes the ascertainment of truth on the crucial international issues of our time.

### Conclusion

The Act's provision for registration of "Communist-action organizations", together with all provisions dependent thereon and the registration order issued thereunder against petitioners, should be held unconstitutional. The judgment of the Court below should be reversed with directions to vacate the Board's order.

Respectfully submitted,

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<sup>10</sup> A person's support of any of petitioner's "purposes" is in turn evidence of his membership in petitioner, in a prosecution under Section 15 of the Subversive Activities Control Act for failure to register or obey the sanctions on members. See Section 5(11), (12), and (13) of the Communist Control Act of 1954 (Ops. 180).